

EXHIBIT 3

To Defendant's Statement of Material Facts Not in Dispute

**Excerpts of the Deposition of
Richard Sanders**

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RICHARD SANDERS,)
Plaintiff(s),)
vs.) 1:20-cv-03137-SAB
WESTERN EXPRESS, INC.,)
Defendant(s).)

Video Recorded Virtual Zoom Deposition Upon Oral
Examination of

RICHARD SANDERS

9:29 a.m.

June 15, 2021

1620 Canyon Road
Ellensburg, Washington

REPORTED BY: Mindi L. Pettit, RPR, WA CCR #2519,
ID CSR #1141

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1 A P P E A R A N C E S
2

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4 (Present via Virtual Zoom)

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Also Present: Alan Morgan, Veritext
(Present via Virtual Zoom)
Rob Welhoelter

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1 Ellensburg, Washington; June 15, 2021

2 9:29 a.m.

3 ---oo---

4 (This deposition is being taken via
5 videoconference and all parties, the
6 witness, the videographer, and court
7 reporter are appearing remotely.)

8 THE VIDEOGRAPHER: We are going on the
9 record at 9:29 a.m. on June 15th, 2021. Please note
10 that microphones are sensitive and may pick up
11 whispering, private conversations, and cellular
12 interference. Please turn off all cell phones or place
13 them away from the microphones as they can interfere
14 with the deposition audio. Audio and video recording
15 will continue to take place unless all parties agree to
16 go off the record.

17 This is Media Unit 1 of the video recorded
18 deposition of Richard Sanders taken by counsel for the
19 defendant in the matter of Richard Sanders versus
20 Western Express, Inc., filed in the United States
21 District Court, Eastern District of Washington, Case
22 No. 1:20-cv-03137-SAB. This deposition is being held
23 at 1620 Canyon Road, Ellensburg, Washington 98926.

24 My name is Alan Morgan from the firm Veritext,
25 and I'm the videographer. The court reporter is Mindi

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1 Pettit from the firm Veritext. I am not authorized to
2 administer an oath, I'm not related to any party in
3 this action, nor am I financially interested in the
4 outcome.

5 If there are any objections to proceeding,
6 please state them at the time of your appearance
7 beginning with the noticing attorney.

8 Will all present please state their name and
9 affiliations for the record.

10 MR. SMEDSTAD: Good morning. Adam
11 Smedstad on behalf of the defendant.

12 MR. ECKHART: Good morning. James
13 Eckhart on behalf of the defendant.

14 MR. HAFFNER: Good morning. Joshua
15 Haffner on behalf of plaintiff. And just for the
16 record, I'd like to note we have Rob Welhoelter from
17 defendant Western Express present virtually.

18 MR. WELHOELTER: Yeah, I'm -- I'm here.
19 I'm an attorney and VP of risk management.

20 RICHARD SANDERS,
21 sworn as a witness pursuant to the Supreme Court of
22 Washington's Order No. 25700-B-610 by the Certified
23 Court Reporter testified as follows:
24
25

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1 license?

2 A. Yes, I did.

3 Q. And when did you get your commercial driver's
4 license?

5 A. It was 2019.

6 Q. Did you go to school to get a CDL?

7 A. I went to Swift Transportation School.

8 Q. How long did you attend Shift -- Swift
9 Transportation School in order to get your commercial
10 driver's license?

11 A. Three weeks.

12 Q. And what class of commercial driver's license
13 did you obtain?

14 A. Class A.

15 Q. When you were at Swift Transportation School,
16 did you learn about the Federal Motor Carrier Safety
17 Administration hours of service regulations?

18 A. I'm sorry, you -- you cut out. I didn't hear
19 the whole thing.

20 Q. When you went to Swift Transportation School,
21 did you learn about the Federal Motor Carrier Safety
22 Administration's hours of service regulations?

23 A. Yes.

24 Q. And what is your understanding of those
25 regulations?

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1 A. Drive -- drive on duty 14 hours, drive 11
2 hours, break for ten hours.

3 Q. And when you say "break," do you mean, off
4 duty?

5 THE WITNESS: He keeps cutting out.

6 Q. (By Mr. Smedstad) I think that's a -- an
7 internet problem in that -- in that location. So your
8 understanding is that a driver can be on duty for a
9 maximum of 14 hours?

10 A. Yes, then you're out.

11 Q. And of that 14 hours, you -- a driver can only
12 legally drive for 11 hours?

13 A. Yes.

14 Q. And then they have to take a ten-hour off-duty
15 break, correct?

16 A. Correct.

17 Q. And during that break, you're supposed to get
18 sleep and become rested so that you can safely drive
19 the following day, correct?

20 A. Yes.

21 Q. Under the hours of service regulations, if
22 you're performing nondriving work, how would you record
23 your duty status?

24 A. Sorry, I didn't hear the whole thing. It cut
25 out again.

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1 Q. Sure. Under the hours of service regulations,
2 if you're performing nondriving work, how should you
3 record your duty status?

4 A. On duty, not driving.

5 Q. Regardless of what kind of work you're doing,
6 correct?

7 A. Correct.

8 Q. After finishing Swift Transportation School,
9 where did you first get a job as a professional truck
10 driver?

11 A. With Swift.

12 Q. And what kind of a truck were you driving?

13 A. Which style? A make? Model?

14 Q. Well, what was -- do you know what a gross
15 vehicle weight rating is?

16 A. Yes.

17 Q. And what is that?

18 A. 80,000 pounds.

19 Q. And were you driving a truck for Swift that
20 had a gross vehicle weight rating of 80,000 pounds?

21 A. Yes.

22 Q. And where were you hired by Swift?

23 A. In Lewiston, Idaho.

24 Q. And what were you doing for Swift?

25 A. I first started out driving dedicated for

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1 conclusion and calls for a legal conclusion, and I
2 object to the form.

3 Q. (By Mr. Smedstad) Go ahead. You -- you can
4 answer, Mr. Sanders.

5 A. I'm not -- as long as I'm still in that truck,
6 I'm solely responsible for every -- the truck and the
7 contents of my trailer.

8 Q. Did you ever leave your truck while you were
9 driving with Swift?

10 A. To go to the bathroom, yes. And eat -- go get
11 something to eat, yes, in the truck stop.

12 Q. And you could do that by simply parking the
13 truck in a safe, secure location, correct?

14 A. Correct.

15 Q. Perhaps backing it up against a wall?

16 A. Or just backing it up in a space, yes.

17 Q. And then you could safely leave that truck,
18 correct?

19 A. Yes.

20 Q. How long did you drive for Swift?

21 A. Six months, eight months.

22 Q. How were you paid?

23 A. By the mile.

24 Q. Were you paid by hub miles or by allocated
25 miles?

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1 A. About a month and a half.

2 Q. And after dealing with your family emergency,
3 did you go looking for employment as a -- a truck
4 driver?

5 A. Yes, I did with Western Express.

6 Q. Did you say with Western Express?

7 A. Yes, sir.

8 Q. How did you hear about the opportunity to
9 drive for Western Express?

10 A. The internet.

11 Q. Did you go looking for Western Express?

12 A. No, I just -- I was just looking for job
13 openings.

14 Q. Did you see any advertisements about job
15 openings from Western Express?

16 A. Yes, on the internet.

17 Q. What did those advertisements say?

18 A. They just -- I -- job opening at Western
19 Express.

20 Q. Did they say anything about how drivers were
21 paid?

22 A. No. I --

23 Q. Anything else?

24 A. I -- no.

25 Q. Did they say anything about the nature of the

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1 freight that you would be driving?

2 A. Not until I called 'em.

3 Q. I just want to deal with the -- the
4 advertisements that you looked at first. All right?

5 Then we'll talk about what the --

6 A. All right.

7 Q. Did they say anything about whether or not you
8 would be paid overtime if you worked more than 40 hours
9 in a week?

10 A. No.

11 Q. Did the advertisements that you looked at say
12 anything other than come apply for a job as a
13 commercial truck driver for Western Express?

14 A. No.

15 Q. Other than the advertisements that you saw on
16 the internet, did you read any literature or printed
17 materials about the opportunity to drive at Western
18 Express?

19 A. No.

20 Q. Was Western Express the only motor carrier
21 that you called when you were searching for job
22 openings as a truck driver?

23 A. I didn't call anybody at that time. I was
24 still looking for jobs on the internet.

25 Q. How long did you look for a job on the

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1 internet?

2 A. About a month.

3 Q. And did you find a job?

4 A. Yes.

5 Q. And did you consider interviewing with motor
6 carriers other than Western Express?

7 A. No.

8 Q. Why?

9 A. 'Cause Western Express contacted me.

10 Q. How did they get your information, do you
11 know?

12 MR. HAFFNER: Objection, calls for
13 speculation.

14 MR. SMEDSTAD: That's why I said did you
15 know -- "do you know."

16 A. No.

17 Q. (By Mr. Smedstad) Did you fill out an online
18 interest?

19 A. Yes.

20 Q. Did you provide your contact information?

21 A. Yes.

22 Q. So you provided Western Express with your
23 contact information, correct?

24 A. Yes.

25 Q. And they contacted you?

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1 A. Yes.

2 Q. Did you fill out any similar forms for other
3 motor carriers?

4 A. Yes.

5 Q. Did they contact you?

6 A. No.

7 Q. Was there something about the opportunity at
8 Western Express that you found more attractive than
9 other motor carriers?

10 A. No.

11 Q. Who contacted you from Western Express?

12 A. The recruiter.

13 Q. Do you know that person's name?

14 A. No, I do not.

15 Q. How long did you speak to the recruiter?

16 A. Couple times, a couple minutes at a time.

17 Q. What did you talk about?

18 A. Where I would be sent, what -- what the job
19 was and . . . My background. That's . . .

20 Q. Did the recruiter tell you anything about how
21 you would be paid?

22 A. No.

23 Q. Did the recruiter tell you that you would be
24 paid overtime?

25 A. He didn't mention it.

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1 Q. Did the recruiter make any representations to
2 you about the nature of the job opportunity at Western
3 Express?

4 A. I'm not sure I understand fully what you're
5 asking.

6 Q. Well, you told me that the recruiter -- you
7 and the recruiter talked for a couple of minutes a
8 couple different times, correct?

9 A. Correct.

10 Q. And you told me that you talked about your
11 background, right?

12 A. Right.

13 Q. And where you would be going, right?

14 A. Yes.

15 Q. And -- and where did the recruiter tell you
16 you would be hauling freight?

17 A. The western part of the United States.

18 Q. The western ten states?

19 A. California, Oregon, Washington, Arizona.

20 Q. And other than telling you where you would be
21 hauling freight and discussing your background, did you
22 have any other substantive discussions with the
23 recruiter from Western Express?

24 A. I don't know what that means.

25 Q. Did you talk to the recruiter about anything

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1 else?

2 A. Where I'd be going, how I would get there.

3 Q. Anything else?

4 A. No.

5 Q. As you reflect back on what the recruiter told
6 you, was there anything that the recruiter told you
7 that turned out not to be true?

8 A. Yes.

9 Q. What?

10 A. Home time, pay.

11 Q. Anything else?

12 A. No.

13 Q. So let's unpack that one at a time. I asked
14 you what you discussed and whether you discussed
15 anything other than where you would be hauling and your
16 background, and you said no. Now you're saying that
17 the -- the recruiter made some representation to you
18 about home time. What was it that the recruiter said
19 to you about home time?

20 A. No, you asked me what I did not like about
21 Western Express.

22 Q. No -- well, then -- then we had a
23 misunderstanding. I'm asking you if the recruiter told
24 you anything that turned out not to be true.

25 A. No, it -- no.

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1 Q. So this -- as best as you can recollect, the
2 recruiter didn't tell you anything about Western
3 Express that turned out not to be true. Is that
4 correct?

5 A. Correct.

6 Q. After talking with this recruiter, did you
7 fill out an application for a job with Western Express?

8 A. Yes.

9 Q. And where did you do that?

10 A. At home.

11 Q. Online?

12 A. Yes.

13 Q. Okay. What was the gross vehicle weight
14 rating of the trucks that you operated for Western
15 Express?

16 A. 80,000 pounds.

17 Q. Did you need a Class A commercial driver's
18 license to operate those trucks?

19 A. Yes.

20 Q. After filling out the job application, what
21 did you do next to explore the opportunity with Western
22 Express?

23 A. Sit around waiting for their call.

24 Q. All right. Would you just walk me through the
25 application process. You filled out the application.

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1 You waited for the call. Then what happened?

2 A. Then they contacted me.

3 Q. Okay. And who contacted you?

4 A. I'm not sure.

5 Q. Was it another recruiter?

6 A. It was somebody saying that they would send me
7 a ticket.

8 Q. And what did the somebody say to you?

9 A. That I was -- I would be hired. They were
10 going to send me a ticket to go down to California for
11 orientation.

12 Q. Prior to this conversation where the person
13 indicated they would be sending you a ticket to go down
14 to California for orientation, did you have a formal
15 interview with anyone from Western Express?

16 A. What do you mean "formal interview"?

17 Q. Where someone asked you questions related to
18 your ability to perform the job that they were
19 considering hiring you for?

20 A. Yes.

21 Q. And with whom did you have the interview?

22 A. I can't remember.

23 Q. And where did the interview take place?

24 A. Over the phone.

25 Q. How long did the interview last?

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1 A. I'm not sure.

2 Q. Did the person from Western Express make any
3 representations to you about the opportunities at
4 Western Express that turned out not to be true?

5 A. At that time, no.

6 Q. When the person called you and told you that
7 they would be sending you a ticket to come down to
8 California for orientation, did you ask that person any
9 questions about the job?

10 A. I don't remember if I did. I might have. I'm
11 not sure what.

12 Q. Did the person who told you they were going to
13 send you the ticket to come to California tell you
14 anything about the pay you would be receiving at
15 Western Express?

16 A. I can't remember.

17 Q. Was it important to you how you would be paid?

18 A. Yeah.

19 Q. Why?

20 MR. HAFFNER: Well, I'm going to object,
21 argumentative, form.

22 Go ahead.

23 Q. (By Mr. Smedstad) You can answer.

24 A. Pay -- I mean . . . That's an obvious thing,
25 is how you're going to be paid.

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1 Q. Did you ask how much you would be paid at
2 Western Express?

3 A. I don't remember if I asked or they told me.
4 I'm not sure.

5 Q. Do you recall what they said?

6 A. Like I said, I'm not sure.

7 Q. As part of the application process, did you
8 have to demonstrate that you satisfied the department
9 of transportation qualifications to drive a commercial
10 motor vehicle?

11 A. What do you mean by "demonstrate"?

12 Q. Provide information about your commercial
13 driver's license, the class of the driver's license,
14 your motor vehicle record or --

15 A. Yes, I had to send them a picture of my Class
16 A driver's license.

17 Q. And did you authorize Western Express to pull
18 a motor vehicle record on your driving?

19 A. Yes.

20 Q. And did you have to fill out a form reflecting
21 what your hours of service had been for the preceding
22 seven days?

23 A. I don't remember.

24 Q. After being told that Western Express was
25 going to send you a ticket to come to California, did

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1 you agree to go to California?

2 A. Yes, I did.

3 Q. And when -- how long after this call in which
4 the person from Western Express advised you that you
5 would be coming to California for orientation did you,
6 in fact, go to California?

7 A. I'm not sure exactly.

8 Q. Best estimate.

9 A. Oh, they called me up and said they -- they --
10 probably about a day or two.

11 Q. Do you remember what month and year this was?

12 A. December of -- hmm -- 2019.

13 Q. And where in California did you go?

14 A. Bloom -- Bloomington.

15 Q. And how long were you in Bloomington,
16 California?

17 A. The -- until I got done with my orientation
18 and I went out with a trainer.

19 Q. How long was orientation?

20 A. It was three days.

21 Q. Do you recall what information was discussed
22 at orientation?

23 A. No, I can't recall.

24 Q. Do you recall whether it was related to
25 safety -- the safe operation of a commercial motor

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1 did Western Express tell you that it was located in
2 Nashville, Tennessee?

3 A. Yes.

4 Q. And did they tell you that all of the work
5 assignments would originate from Tennessee?

6 A. I don't remember that.

7 Q. Do you recall Western Express telling you that
8 your employment with Western Express would be
9 determined in the state of Tennessee?

10 A. No, I don't.

11 Q. You filed a complaint in this case, correct?

12 A. Correct.

13 Q. Did you review it prior to it being filed?

14 A. I -- I don't know.

15 Q. Are you aware that you filed an amended
16 complaint in this case?

17 MR. HAFFNER: I'm going to object to the
18 form of the question, form. He's represented by
19 counsel in this matter.

20 Q. (By Mr. Smedstad) Are you aware that a second
21 complaint has been filed on your behalf that altered
22 the allegations contained in the first complaint?

23 A. I don't know that -- I leave everything up to
24 my lawyer.

25 Q. As you sit here today, have you ever read any

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1 of the allegations contained in either of the
2 complaints that were filed on your behalf?

3 A. I have not read anything about -- like I said,
4 I leave that up to my lawyer.

5 Q. Just to cover the point, I'm going to
6 introduce a copy of your first amended complaint.

7 (Deposition Exhibit 2 was marked for
8 identification.)

9 Q. (By Mr. Smedstad) I'm going to share my
10 screen again. Can you see my screen, sir?

11 A. Yes.

12 Q. All right. And, sir, I'm going to show you
13 what I've marked for identification as Exhibit 2, and
14 I'll represent for the record it's a 16-page document
15 that is a copy of the First Amended Class Action
16 Complaint filed on behalf of Richard Sanders versus
17 Western Express. And I'm just going to slowly scroll
18 through it and ask you if you've ever seen this
19 document before. You tell me if I'm going too fast.

20 MR. HAFFNER: Mr. Sanders, can you
21 answer the question.

22 MR. SMEDSTAD: Well, I'm -- I'm letting
23 him see the whole thing, Josh.

24 MR. HAFFNER: Well, if he can answer, he
25 can go ahead and answer.

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1 A. No, I -- I don't remember seeing all of this.

2 Q. (By Mr. Smedstad) So, as you sit here today,
3 you can't ever recall seeing a copy of Exhibit 2?

4 A. No.

5 Q. Is that correct?

6 A. That's correct.

7 Q. Do you know whether the information contained
8 in Exhibit 2 is accurate?

9 MR. HAFFNER: Objection, overbroad,
10 calls for speculation, vague, form.

11 Q. (By Mr. Smedstad) Go ahead and answer, sir.

12 MR. HAFFNER: Calls for a contention
13 interrogatory as well.

14 Q. (By Mr. Smedstad) Go ahead and answer, sir.

15 A. If I remember what it entails?

16 Q. No. I'm asking you whether or not you --
17 whether you know whether the information contained in
18 Exhibit 2 is accurate.

19 MR. HAFFNER: I'm going to object as
20 to -- he just testified he had -- he didn't -- he
21 didn't know it -- he didn't know about it. So I don't
22 know what you're asking about, like --

23 Go ahead, you can answer to the best you can.

24 A. No, I don't know what's in it if I can't
25 remember if I've seen.

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1 Q. During the time that you drove for Western
2 Express, did they, in fact, compensate you at 38 cents
3 a mile?

4 A. Yes.

5 Q. Did they give you pay statements?

6 A. On my Qualcomm.

7 Q. Did you look at those?

8 A. Yes.

9 Q. And did you check them to make sure they were
10 correct?

11 A. Yes.

12 Q. And other than the instance of the missing
13 breakdown pay, were there any other instances in which
14 Western Express failed to compensate you correctly?

15 A. Yes.

16 Q. Tell me about that.

17 A. Because I'm . . . I can't remember all of it.

18 Q. Can you think of a single instance, other than
19 the breakdown pay that you did not receive?

20 A. As in?

21 Q. Where you looked at your driver pay statement,
22 determined that you were not paid correctly.

23 A. Yeah, because I -- I knew I drove more -- more
24 miles than what was said.

25 Q. And how many times did that happen?

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1 would get paid on, correct?

2 A. Yes.

3 Q. And did the miles that the Qualcomm showed you
4 tie out with the miles that Western Express actually
5 paid you on?

6 A. I don't know.

7 Q. You told me that you had a driver manager
8 named Marcus. Correct?

9 A. Yes.

10 Q. And is that your only driver manager while you
11 were working for Western Express?

12 A. No, I had two others.

13 Q. And what were the names of your other driver
14 managers?

15 A. I can't remember right now.

16 Q. Do you recall if they were men or women?

17 A. They were men.

18 Q. Do you recall where they were located?

19 A. In Bloomington.

20 Q. Again, California?

21 A. Yes.

22 Q. Walk me through the dispatch process.

23 A. I would receive based upon the Qualcomm.

24 Q. You would receive a what on the Qualcomm?

25 A. My -- where to go, where my pickup was, and

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1 where to deliver it to.

2 Q. Do you know who sent the Qualcomm message?

3 A. No, I don't know who sent it. It comes over
4 the Qualcomm.

5 Q. Do you know whether you had a dispatcher?

6 A. I probably did.

7 Q. Do you know who your dispatcher was?

8 A. No.

9 Q. Do you know where the dispatch assignments
10 came from?

11 A. My understanding, it was from Bloomington.

12 Q. Where did you get that understanding?

13 A. When I would go back to the terminal, talk to
14 my driver manager, they had the dispatchers right next
15 to 'em.

16 Q. And your -- your terminal was located in
17 Bloomington, California?

18 A. Yes.

19 Q. And was that true for the entire time that you
20 worked for Western Express?

21 A. Yes.

22 Q. Did you report to work each day in
23 Bloomington, California?

24 A. I'm not sure what you mean by that.

25 Q. Well, you told me a bit ago that your dispatch

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1 Q. So you worked for Western Express for
2 approximately seven months; is that right?

3 A. Yeah, about that.

4 Q. And during that seven-month period, you showed
5 up physically to the terminal located in Bloomington,
6 California, a couple times?

7 A. Yeah, a few times. I mean, you know, I
8 couldn't remember the exact amount of times, but . . .

9 Q. Fewer than ten?

10 A. Yes.

11 Q. As you sit here today, are you aware of any
12 facilities that Western Express has in Washington
13 State?

14 A. What do you mean? Terminals?

15 Q. Yes.

16 A. No, I'm not aware of any.

17 Q. Have you ever been to a building that Western
18 Express owned in Washington State other than a
19 terminal?

20 A. No.

21 Q. Are you aware of Western Express having any
22 dispatchers in Washington State?

23 A. No.

24 Q. I think the answer to this question is no, but
25 I want to make sure I understand what you said. While

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1 you were working for Western Express, did you have a
2 regular route?

3 A. No.

4 Q. So it was just all over, correct?

5 A. Correct.

6 Q. And how long would you be on the road before
7 coming home?

8 A. It depends. Could be a month to two months.
9 But I tried to get home every month.

10 Q. I apologize, I tried to get all my? You
11 said I tried to get all my --

12 MR. HAFFNER: No, I think he said I
13 tried to be home every month.

14 THE WITNESS: Yes, I did.

15 Q. (By Mr. Smedstad) Did you tell anyone at
16 Western Express that you wanted to get home every
17 month?

18 A. Well, I put in a home request every month
19 through my Qualcomm.

20 Q. And did Western Express authorize you to go
21 home every month?

22 A. Pretty much all the time, except for once.

23 Q. And what was the one time that Western Express
24 did not allow you to go home?

25 A. The last time. They -- they allowed me to go

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1 home, but it -- they were messing around.

2 Q. What does that mean?

3 A. It means they were trying not to get me home.

4 Q. Tell me what you mean by that.

5 A. They kept telling me they had no runs up to
6 Washington.

7 Q. Did you believe that that was not true?

8 A. I knew that was not true.

9 Q. How did you know it wasn't true?

10 A. Because I know they go up to Washington all
11 the time.

12 Q. How do you know that they had runs at the time
13 you were requesting to go back to Washington?

14 A. 'Cause I know they go up there.

15 Q. Anything else? Any other ways -- basis?

16 A. Just common knowledge.

17 Q. And when they told you that you didn't have --
18 that they didn't have runs back to Washington, did you
19 go ahead and take the truck to Washington anyway?

20 A. No. They finally got a run up to Washington
21 eventually.

22 Q. Okay. Do you believe that someone at Western
23 Express was intentionally trying to thwart your ability
24 to get home?

25 A. Yes, I believe that.

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1 Q. A few hundred or 200?

2 A. 200.

3 Q. And I apologize, sir, I'm just trying to make
4 sure I can hear you correctly.

5 A. It's all right.

6 Q. Are you familiar with IFTA?

7 A. Yeah, don't know what -- what's IFTA?

8 Q. I-F-T-A?

9 A. No, I don't.

10 Q. Are you aware that Western Express tracks the
11 miles that your truck drives and which state it drives
12 in?

13 A. I would imagine they have the GPS on the --
14 all trucks so they know where I'm at.

15 Q. When you were working for Western Express,
16 were you using paper logs or electronic logs?

17 A. Electronic.

18 Q. And who decided what your duty status would be
19 while you were working for Western Express?

20 A. I'm sorry, what do you mean by that?

21 Q. Well, if the truck was moving, did the ELD
22 automatically go to driving?

23 A. Yes, it would.

24 Q. And when the truck was stopped, did you have
25 to make a decision as to whether to record your duty

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1 status as off duty or on duty not driving?

2 A. Yes.

3 Q. And you were the individual that made that
4 decision, correct?

5 A. Yes.

6 Q. Is it yes?

7 A. Yes.

8 Q. And that's based on whether you were working
9 or going off duty, correct?

10 A. Yes.

11 Q. So, if you're not working and not in the
12 sleeper berth, you would log that as off duty, correct?

13 A. Yes.

14 Q. And if you were not working and spending your
15 time in the sleeper berth, you would mark that as
16 sleeper berth, correct?

17 A. Yeah, correct.

18 Q. Did you make an effort to record your duty
19 statuses accurately?

20 A. Yes.

21 Q. What are you doing now, by the way?

22 A. Talking to you.

23 Q. That's -- that's an excellent answer. What
24 are you doing now for a living, sir?

25 A. Right now I'm working at the fairgrounds in

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1 Q. And are you no longer able to legally drive a
2 commercial motor vehicle?

3 A. No, I can still drive one.

4 Q. It's just difficult?

5 A. Yes, and I don't . . . I don't want to have
6 something happen.

7 Q. You don't feel like you would be safe doing
8 it?

9 A. I feel like I'd be safe, but I don't know
10 what -- how -- I'm worried about if something does
11 happen, I don't want to be felt -- I don't want to hurt
12 anybody.

13 Q. Do you know any other drivers who drove for
14 Western Express?

15 A. I've met some, yes.

16 Q. Do you know any by name?

17 A. I can't -- I can't remember their names right
18 now.

19 Q. Do you know whether or not other drivers from
20 Western Express accurately recorded their duty status?

21 A. I wouldn't have no knowledge of what they do.

22 Q. You told me earlier this morning that when
23 you're performing nondriving work for Western Express,
24 you should record your duty status as on duty not
25 driving, correct?

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1 A. Well, if -- if . . . Well, off -- log --
2 no -- what do you mean?

3 Q. So, for example, if you're doing a pretrip
4 inspection, you would record that as on duty not
5 driving, correct?

6 A. That would be on duty.

7 Q. Yeah. Not driving -- you're not driving while
8 on --

9 A. Correct.

10 Q. -- duty? And you got to wait until I finish.
11 I apologize.

12 A. I'm sorry.

13 Q. Yeah. And if you do a post trip, you're going
14 to record that as on duty not driving, correct?

15 A. Correct.

16 Q. And if you fuel, you're going to record that
17 as on duty not driving, correct?

18 A. Correct.

19 Q. And you're supposed to log yourself as on duty
20 if you're doing any work, correct?

21 A. Correct.

22 Q. And you understand that sleeper berth time is
23 considered off duty time, correct?

24 A. Correct.

25 Q. And how long were you working for Western

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1 that you were working for Western Express?

2 A. No.

3 Q. How many trucks did you operate?

4 A. Two.

5 Q. Did each of those trucks have a sleeper berth?

6 A. Yes.

7 Q. If you had been on the road in a truck without
8 a sleeper berth, where would you have had to take your
9 break time?

10 MR. HAFFNER: Objection, calls for
11 hypothetical, calls for speculation.

12 Q. (By Mr. Smedstad) Go ahead and answer.

13 A. I don't know where I would sleep or take my
14 off time.

15 Q. Hotel room?

16 MR. HAFFNER: Objection, calls for
17 speculation. Form.

18 Q. (By Mr. Smedstad) Go ahead and answer, sir.

19 A. I would imagine. I'm not going to sleep on
20 the road. I -- you know.

21 Q. During the time that you worked at Western
22 Express, did you ever stay in a hotel room instead of
23 sleeping in the sleeper berth?

24 A. Yes.

25 Q. Was that your decision?

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1 A. Yes.

2 Q. And how many times did you decide to stay in a
3 hotel room instead of the sleeper berth?

4 A. Once.

5 Q. And why did you do that?

6 A. Because they were working on my truck.

7 Q. Do you know whether or not other drivers elect
8 to stay in hotels instead of sleeping in their sleeper
9 berths when they're on the road?

10 A. I have no clue.

11 Q. Are you aware of any Western Express policy
12 that prohibited drivers from staying in hotel rooms
13 when they were off duty?

14 A. No.

15 Q. Is it your understanding that you could have
16 elected to stay in a hotel room instead of sleeping in
17 the sleeper berth of your truck if you wanted to?

18 A. I -- I don't know.

19 Q. How long did you typically spend in the
20 sleeper berth of your truck while you were working at
21 Western Express?

22 A. How long? I mean, the whole time I was
23 working there?

24 Q. Yeah.

25 A. I don't know the exact hours.

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1 Q. I guess what I'm trying to get at is you told
2 me earlier that after being on duty for 14 hours, you
3 had to take a ten-hour break, correct?

4 A. Correct.

5 Q. And that time had to be either logged as off
6 duty or sleeper berth, correct?

7 A. Correct.

8 Q. And some drivers will only spend ten hours off
9 duty while other drivers will spend longer. Did you
10 have a practice?

11 A. I'm not sure I understand what you mean. Do
12 you mean -- do you mean, how long I stayed in the
13 sleeper berth?

14 Q. Correct.

15 A. Ten hours.

16 Q. And as soon as the ten hours was up, you got
17 out of the sleeper berth and started working again?

18 A. Yes.

19 Q. Do you know how long other Western Express
20 drivers elected to stay in the sleeper berth?

21 A. I would not -- I don't know that information.
22 I don't know what other drivers do.

23 Q. Did you always work 14 hours every day while
24 you were working for Western Express?

25 A. Yes.

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1 Q. So, if we were to look at your hours of
2 service logs, we would see that you were on duty 14
3 hours a day every day that you worked for Western
4 Express?

5 A. I would imagine. There -- there might have
6 been a couple times where I had a quick trip or
7 something. I -- yeah, I don't know the exact thing
8 right now.

9 Q. I know you told me that you didn't have a
10 regular route while you were working at Western
11 Express. Correct?

12 A. Correct.

13 Q. Were you primarily working in any one state?

14 A. No.

15 Q. Do you recall ever working in Washington State
16 for an entire week?

17 A. Yes.

18 Q. How many times?

19 A. Once.

20 Q. And when was that?

21 A. I can't remember the exact dates.

22 Q. Do you know how long you -- how many hours you
23 worked that week?

24 A. I can't recall.

25 Q. Have you ever violated your hours of service

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1 while you were working at Western Express?

2 A. No.

3 Q. As we sit here today, while you were working
4 at Western Express, do you recall a single instance you
5 worked in which you worked more than 40 hours in one
6 week in Washington State?

7 A. No, I can't recall.

8 Q. When you decided that it was time to go off
9 duty or go into the sleeper berth, did you go and get
10 something to eat first?

11 MR. HAFFNER: Objection --

12 A. Sometimes.

13 MR. HAFFNER: -- form.

14 MR. SMEDSTAD: I could hear neither the
15 objection nor the answer.

16 MR. HAFFNER: Objection, form.

17 Q. (By Mr. Smedstad) Go ahead, sir.

18 A. Sometimes.

19 Q. Did you have a habit or a routine?

20 A. No.

21 Q. Did you have a refrigerator in the sleeper
22 berth?

23 A. No.

24 Q. Other than a place to sleep and a microwave,
25 what else was in the sleeper berth of your truck while

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1 you were working at Western Express?

2 A. At Western Express, I did not have a microwave
3 in my truck. I had a microwave at Swift.

4 Q. And why did you elect not to bring your
5 microwave with you to Western Express?

6 A. Because they did not have a place where I
7 could plug it in -- an inverter. They did not allow
8 inverters in the truck.

9 Q. Did you have an ice chest in the truck?

10 A. Yes.

11 Q. Anything else?

12 A. Nope.

13 Q. Did you think it was important to rest while
14 you were in the sleeper berth of your truck while
15 working at Western Express?

16 A. Yes.

17 Q. Did you have a target for the amount of sleep
18 you would like to get each night?

19 A. I didn't have a target. It would be however
20 long I did sleep.

21 Q. Was it your goal to sleep as much of the ten
22 hours as possible?

23 A. Yes.

24 Q. Based on your understanding of the hours of
25 service regulations, what is the difference between

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1 time logged as off duty and time logged as sleeper
2 berth?

3 MR. HAFFNER: Objection, calls for a
4 legal conclusion.

5 Q. (By Mr. Smedstad) Go ahead and answer, sir.

6 A. Off duty is you park your truck wherever you
7 go to do -- go to get something to drink or at a rest
8 area, to go to the bathroom. And a sleeper berth,
9 you're in your sleeper berth.

10 Q. Any other differences?

11 A. I don't know what you mean. How --

12 Q. I'm asking you.

13 MR. HAFFNER: Again, objection, calls
14 for a legal conclusion.

15 You can answer.

16 A. Anything -- any time I'm out of my truck is
17 off duty.

18 Q. (By Mr. Smedstad) Unless you're working,
19 correct?

20 MR. HAFFNER: Objection, calls for a
21 legal conclusion.

22 Q. (By Mr. Smedstad) Right?

23 A. If I'm working, then I'm on duty, not off
24 duty.

25 Q. Got it. You told me that you quit Western

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1 REPORTER'S CERTIFICATE

2 I, MINDI L. PETTIT, the undersigned Certified
3 Court Reporter pursuant to RCW 5.28.010 authorized to
4 administer oaths and affirmations in and for the State
5 of Washington, do hereby certify that the sworn
6 testimony and/or proceedings, a transcript of which is
7 attached, was given remotely before me at the time and
8 place stated therein; that any and/or all witness(es)
9 were duly sworn to testify to the truth; that the sworn
10 testimony and/or proceedings were by me
11 stenographically recorded and transcribed under my
12 supervision, to the best of my ability; that the
13 foregoing transcript contains a full, true, and
14 accurate record of all the sworn testimony and/or
15 proceedings given and occurring at the time and place
16 stated in the transcript; that a review of which was
17 requested; that I am in no way related to any party to
18 the matter, nor to any counsel, nor do I have any
19 financial interest in the event of the cause.

20 WITNESS MY HAND AND DIGITAL SIGNATURE this 29th

21 d^a 

22

MINDI L. PETTIT, RPR

24

Washington State Certified Court Reporter #2519

25

Idaho State Certified Shorthand Reporter #1141

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Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

June 30, 2021

To: MR. HAFFNER

Case Name: Sanders, Richard v. Western Express, Inc.

Veritext Reference Number: 4631355

Witness: Richard Sanders Deposition Date: 6/15/2021

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness

review the transcript and note any changes or corrections on the

¹ See also the discussion of the relationship between capital and labor in the model of economic growth in the United States by Solow (1956).

the reason for the change. Have the witness signature notarized and

forward the completed page(s) back to us at the Production address

above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of

this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

NO NOTARY REQUIRED IN CA

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1 DEPOSITION REVIEW
2 CERTIFICATION OF WITNESS

3 ASSIGNMENT REFERENCE NO: 4631355

4 CASE NAME: Sanders, Richard v. Western Express, Inc.

5 DATE OF DEPOSITION: 6/15/2021

6 WITNESS' NAME: Richard Sanders

7 In accordance with the Rules of Civil
8 Procedure, I have read the entire transcript of
9 my testimony or it has been read to me.

10 I have made no changes to the testimony
11 as transcribed by the court reporter.

12 _____ Date Richard Sanders

13 Sworn to and subscribed before me, a
14 Notary Public in and for the State and County,
15 the referenced witness did personally appear
16 and acknowledge that:

17 They have read the transcript;
18 They signed the foregoing Sworn
19 Statement; and
20 Their execution of this Statement is of
21 their free act and deed.

22 I have affixed my name and official seal

23 this _____ day of _____, 20_____.
24

25 _____ Notary Public

_____ Commission Expiration Date

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1 DEPOSITION REVIEW
2 CERTIFICATION OF WITNESS

3 ASSIGNMENT REFERENCE NO: 4631355

4 CASE NAME: Sanders, Richard v. Western Express, Inc.

5 DATE OF DEPOSITION: 6/15/2021

6 WITNESS' NAME: Richard Sanders

7 In accordance with the Rules of Civil
8 Procedure, I have read the entire transcript of
9 my testimony or it has been read to me.

10 I have listed my changes on the attached
11 Errata Sheet, listing page and line numbers as
12 well as the reason(s) for the change(s).

13 I request that these changes be entered
14 as part of the record of my testimony.

15 I have executed the Errata Sheet, as well
16 as this Certificate, and request and authorize
17 that both be appended to the transcript of my
18 testimony and be incorporated therein.

19 _____ Date Richard Sanders

20 Sworn to and subscribed before me, a
21 Notary Public in and for the State and County,
22 the referenced witness did personally appear
23 and acknowledge that:

24 They have read the transcript;

25 They have listed all of their corrections
in the appended Errata Sheet;

They signed the foregoing Sworn
Statement; and

Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20_____.

Notary Public

Commission Expiration Date

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1 ERRATA SHEET

2 VERITEXT LEGAL SOLUTIONS MIDWEST

3 ASSIGNMENT NO: 4631355

4 PAGE/LINE(S) / CHANGE /REASON

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 Date Richard Sanders

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

22 DAY OF _____, 20_____.
23 _____

24 Notary Public
25 _____

Commission Expiration Date

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gl@haffnerlawyers.com

Attorneys for Plaintiff, RICHARD SANDERS, an individual, on behalf of himself and all others similarly situated

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

RICHARD SANDERS, an individual, on behalf of himself and all others similarly situated,

Plaintiff.

V.

WESTERN EXPRESS, INC.; and
DOES 1 through 10, inclusive,

Defendant.

Case No. 1:20-cv-03137-SAB

**FIRST AMENDED CLASS ACTION
COMPLAINT
(JURY TRIAL DEMANDED)**

Plaintiff Richard Sanders (“Plaintiff”) is informed and believes, and on that basis alleges, as follows:

NATURE OF THE ACTION

27 1. This is a Washington class and Federal Labor Standards Act
28 ("FLSA") collective action for failure to pay for rest breaks, minimum

FIRST AMENDED CLASS ACTION COMPLAINT

Exhibit 0002

1 other labor violations. As more fully described herein, Defendant Western
 2 Express, Inc. (“Defendant”) paid Plaintiff and class members on a per mile driven
 3 basis. Defendant’s pay plan failed to compensate Plaintiff and other drivers for
 4 rest breaks or minimum wage for non driving activities. Plaintiff seek among other
 5 things, all wages, and statutory remedies.

6 **PARTIES**

7 2. Plaintiff Richard Sanders was, at all relevant times, a resident and
 8 citizen of Washington. Plaintiff Sanders was employed by Defendant from
 9 approximately December 2019 through August 2020 as a driver.

10 3. Defendant Western Express, Inc. is a transportation company, that is
 11 authorized to conduct and is actually conducting business in the State of
 12 Washington, and that designates its main office in Tennessee.

13 4. Plaintiff is currently ignorant of the true names and capacities,
 14 whether individual, corporate, associate, or otherwise, of the Defendants sued
 15 herein under the fictitious names Does 1 through 10, inclusive, and therefore sue
 16 such Defendants by such fictitious names. Plaintiff will seek leave to amend this
 17 complaint to allege the true names and capacities of said fictitiously named
 18 Defendants when their true names and capacities have been ascertained. Plaintiff
 19 is informed and believes and thereon alleges that each of the fictitiously named
 20 Defendants is legally responsible in some manner for the events and occurrences
 21 alleged herein, and for the damages suffered by the Class.

22 5. Plaintiff is informed and believe and thereon allege that all
 23 Defendants, including the fictitious Doe Defendants, were at all relevant times
 24 acting as actual agents, conspirators, ostensible agents, alter egos, partners and/or
 25 joint venturers and/or employees of all other Defendants, and that all acts alleged
 26 herein occurred within the course and scope of said agency, employment,
 27 partnership, and joint venture, conspiracy or enterprise, and with the express and/or
 28 implied permission, knowledge, consent authorization and ratification of their co-

1 Defendant; however, each of these allegations are deemed “alternative” theories
 2 whenever not doing so would result in a contradiction with other allegations.

3 **JURISDICTION AND VENUE**

4 6. This Court has jurisdiction over the entire action by virtue of the fact
 5 that this is a civil action wherein the matter in controversy, exclusive of interest
 6 and costs, exceeds the jurisdictional minimum of the Court. The acts and
 7 omissions complained of in this action took place in part in the State of
 8 Washington. At least one Defendant is a citizen of a state outside of Washington,
 9 and federal diversity jurisdiction exists and/or jurisdiction under the Class Action
 10 Fairness Act (“CAFA”). The class amount at issue exceeds \$5,000,000 and the
 11 jurisdictional minimum of this Court under CAFA. Venue is proper because this is
 12 a class action, the acts and/or omissions complained of took place, in whole or in
 13 part within the venue of this Court.

14 **FACTUAL ALLEGATIONS**

15 7. Plaintiff and the Class worked as drivers for Defendant transporting
 16 goods in trucks. Defendant paid Plaintiffs and Class members on a per mile basis.

17 8. Plaintiffs and class members were not paid for rest breaks because
 18 Defendant’s “piece rate,” or per mile, pay plan failed to compensate for rest
 19 breaks, and failed to treat rest breaks as “on the employer’s time,” in violation of
 20 Washington Administrative Code §296-126-092(4).

21 9. Because Plaintiffs and Class members are primarily paid on a per mile
 22 basis, they are for the large part only paid for driving time, and are not
 23 compensated for non-driving time work performed by Plaintiffs and Class
 24 members. The non-driving time Plaintiffs and Class members worked for
 25 Defendant and were not compensated for includes, but is not limited to, pre and
 26 post trip inspections, meetings, waiting for loading or unloading of goods
 27 transported, training, driving back with empty loads (also known as dead heading),
 28 and while on the road, away from home, for over 24 hours. Defendant’s failure to

1 compensate Plaintiffs and Class members for all time worked violates Revised
 2 Code of Washington §49.46.020.

3 10. For example, the final week that Plaintiff worked for Defendant, he
 4 drove from Tulare, California to Lacey, Washington. Despite travelling over 916
 5 miles, a portion of which necessarily occurred within the state of Washington,
 6 Plaintiff received no compensation at all for this work.

7 11. Defendant's conduct, as alleged herein, has caused Plaintiff and Class
 8 members damages including, but not limited to, loss of wages and compensation.
 9 Plaintiffs and Class members experienced these violations each qualifying shift
 10 they worked because of the nature of Defendant's pay plan.

11 12. Plaintiffs are informed and believes, and on that basis alleges, that
 12 Plaintiff and the Class did not knowingly submit to the wage violations alleged
 13 herein. Revised Code of Washington §49.52.070 provides that employers who
 14 violate Washington's minimum wage laws under the circumstances present in this
 15 case are liable for double the amount of wages improperly withheld. Pursuant to
 16 Revised Code of Washington §49.52.080, there exists a presumption of
 17 willfulness.

18 13. Defendant failed to pay Plaintiff and other class members minimum
 19 wage in compliance with the Federal Labor Standards Act ("FLSA"). Pursuant to
 20 29 C.F.R §785.22(a), Plaintiff and similarly situated drivers must paid for all non-
 21 driving time when on the road for over 24 hours. Plaintiff and collective and class
 22 members regularly drove for Defendant and were on the road for over 24 hours,
 23 without being compensated federal minimum wage, in violation of 29 C.F.R
 24 §785.22(a). Plaintiff is informed and believes, and on that basis alleges, that
 25 Defendant fails to pay its drivers for all on duty time, or for rest breaks less than 20
 26 minutes, in violation of 29 C.F.R. §785.18. Plaintiff is informed and believes, and
 27 on that basis alleges, Defendant fails to pay its drivers for all compensable
 28 orientation and training time.

1 14. Plaintiff and all similarly situated drivers are victims of a single,
 2 similarly applied employer-based compensation policy. In violation of
 3 Washington law and the FLSA, that policy has been applied, and continues to be
 4 applied, to all Defendant's drivers.

5 15. Plaintiff is a member of and seeks to be the representative for the
 6 Class of similarly situated employees who all have been exposed to, have suffered,
 7 and/or were permitted to work under, Defendant's unlawful employment practices
 8 as alleged herein.

9 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

10 16. Plaintiff brings this action on behalf of herself, and on behalf of all
 11 others similarly situated, and as a member of the Class defined as follows:

12 **Washington Class:** All current or former Washington
 13 residents who worked for Defendant as drivers at any time
 14 beginning three (3) years prior to the filing of the Complaint
 15 through the date notice is mailed to the Class.

16 **FLSA Class:** All current or former Washington residents who
 17 worked for Defendant as drivers at any time beginning three
 18 (3) years prior to the filing of the Complaint through the date
 19 notice is mailed to the Class.

20 17. Plaintiff reserves the right to amend or otherwise alter the sub-class
 21 definitions presented to the Court at the appropriate time, or to propose or
 22 eliminate sub-classes, in response to facts learned through discovery, legal
 23 arguments advanced by Defendant or otherwise.

24 18. This action has been brought and may be properly maintained as a
 25 class action pursuant to Federal Rules of Civil Procedure Rule 23 and other
 26 applicable law, as follows:

27 19. **Numerosity of the Class:** Members of the Class are so numerous
 28 that their individual joinder is impracticable. The precise number of Class

members and their addresses are known to Plaintiff or will be known to Plaintiff through discovery. Class members may be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

20. Existence of Predominance of Common Questions of Fact and

Law: Common questions of law and fact exist as to all members of the Class.

These questions predominate over any questions affecting only individual Class members. These common legal and factual questions include:

- a. Whether Defendant's pay plan fails to compensate for rest break time;
- b. Whether Defendant's failure to pay for rest break time was willful;
- c. Whether Plaintiffs and each member of the Class were not paid minimum wage for time worked during the Class period;
- d. Whether Plaintiffs and each member of the Class were not paid overtime for time worked during the Class period;
- e. Whether Defendant's failed to compensate for orientation and training time;
- f. The nature and extent of class-wide injury and the measure of damages for the injury.

21. Typicality: Plaintiff's claims are typical of the claims of the members of the subclasses they represent because Plaintiff, as a driver for Defendant, was exposed and subjected to the same unlawful business practices as other drivers employed by Defendant during the liability period. Plaintiff and the members of the class she represents sustained the same types of damages and losses.

22. Adequacy: Plaintiff is adequate representatives of the Class they seeks to represent because their interests do not conflict with the interests of the members of the subclasses Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intend to prosecute this action vigorously. The interests of members of each Class will be fairly and adequately protected by Plaintiff and their counsel.

1 23. **Superiority and Substantial Benefit:** The class action is superior to
 2 other available means for the fair and efficient adjudication of Plaintiff and the
 3 Class members' claims. The violations of law were committed by Defendant in a
 4 uniform manner and class members were exposed to the same unlawful practices.
 5 The damages suffered by each individual Class member may be limited. Damages
 6 of such magnitude are small given the burden and expense of individual
 7 prosecution of the complex and extensive litigation necessitated by Defendant's
 8 conduct. Further, it would be virtually impossible for the Class members to redress
 9 the wrongs done to them on an individual basis. Even if members of the Class
 10 themselves could afford such individual litigation, the court system could not.
 11 Individualized litigation increases the delay and expense to all parties and the court
 12 system, due to the complex legal and factual issues of the case. By contrast, the
 13 class action device presents far fewer management difficulties, and provides the
 14 benefits of single adjudication, economy of scale, and comprehensive supervision
 15 by a single court.

16 24. The Class should also be certified because:

17 a. The prosecution of separate actions by individual members of the
 18 Class would create a risk of inconsistent or varying adjudications with respect to
 19 individual Class members which would establish incompatible standards of
 20 conduct for Defendant;

21 b. The prosecution of separate actions by individual members of the
 22 Class would create a risk of adjudication with respect to them, which would, as a
 23 practical matter, be dispositive of the interests of the other Class members not
 24 parties to the adjudications, or substantially impair or impede their ability to
 25 protect their interests; and

26 c. Defendant has acted or refused to act on grounds generally applicable
 27 to the Class, and/or the general public, thereby making appropriate final and
 28 injunctive relief with respect to the Classes as a whole.

1 **FIRST CAUSE OF ACTION**
 2 **FAILURE TO PAY REST BREAKS**
 3 **(Against All Defendants)**

4 25. Plaintiff re-alleges and incorporates all preceding paragraphs as if
 5 fully set forth herein.

6 26. Revised Code of Washington §49.12.010 provides that “[t]he welfare
 7 of the state of Washington demands that all employees be protected from
 8 conditions of labor which have a pernicious effect on their health. The state of
 9 Washington, therefore, exercising its police and sovereign power declares that
 10 inadequate wages and unsanitary conditions of labor exert such pernicious effect.”

11 27. Revised Code of Washington §49.12.020 provides that “[i]t shall be
 12 unlawful to employ any person in any industry or occupation within the State of
 13 Washington under conditions of labor detrimental to their health.” Under Revised
 14 Code of Washington §49.12.005 and Washington Administrative Code §296-126-
 15 002, conditions of labor “means and includes the conditions of rest . . . periods”
 16 for employees.

17 28. Washington Administrative Code §296-126-092(4) provides as
 18 follows: “Employees shall be allowed a rest period of not less than ten minutes,
 19 on the employer’s time, for each four hours of working time.”

20 29. At all times relevant during the liability period, Defendant willfully
 21 failed and refused, and continues to willfully fail and refuse, to pay Plaintiff and
 22 Washington Class members the amounts owed. Specifically, Defendant pays
 23 drivers on a per mile basis, and thus does not provide paid rest break time. This
 24 conduct violates Washington law as alleged in this cause of action.

25 30. Defendant’s unlawful conduct alleged herein occurred in the course of
 26 employment of Plaintiff and all other similarly situated class members, and
 27 Defendant has done so continuously throughout the filing of this complaint.

28 31. As a direct and proximate result of Defendant’s violation Washington

rest break law, Plaintiff and other Washington Class members have suffered harm and money damages. Plaintiff, on behalf of himself and on behalf of the Washington Class, seeks damages for unpaid rest breaks, at their regular rate of pay, and all other relief allowable, including all unpaid wages, double damages, and attorney's fees.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
(Against All Defendants)

32. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

33. Revised Code of Washington §§49.46.020 and 49.46.120 establish Washington State's minimum wage standards.

34. Revised Code of Washington §49.46.090 provides: "Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court."

35. As set forth herein, Defendant failed to compensate Plaintiff and Class members for non-driving time, and thus violated Washington's minimum wage laws.

36. Defendant's actions alleged herein have violated Washington minimum wage laws, and Defendant is therefore liable to Plaintiff and the Washington Class for actual damages, double damages, and attorneys' fees and costs, in amounts to be determined at trial.

THIRD CAUSE OF ACTION
WILLFUL REFUSAL TO PAY WAGES
(Against All Defendants)

37. Plaintiff re-alleges and incorporates all preceding paragraphs as if

fully set forth herein.

38. Defendant's have denied Plaintiff and the Washington Class wages and benefits of employment, as alleged herein, in violation of Revised Code of Washington §49.52.050. Defendant is, therefore, liable to Plaintiff for all such pay and other improperly deducted, rebated wages or unpaid earnings, and double damages, under Revised Code of Washington §49.52.070.

39. Plaintiff and the Washington Class have been deprived of wages and/or compensation, and Defendant is liable for actual damages, double damages, and attorneys' fees and costs, in amounts to be determined at trial.

FOURTH CAUSE OF ACTION
FAILURE TO PAY OVERTIME
(Against All Defendants)

40. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

41. Plaintiff and class members worked for Defendants over 40 hours a week while in Washington, and were entitled to overtime under Washington law. Defendant, however, failed to pay any such overtime.

42. Revised Code of Washington §49.46.130 provides that no employer shall employ any employee for a workweek longer than 40 hours unless the employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and half times the regular rate at which he is employed.

43. By its action alleged herein, including but not limited to, not paying for overtime, Defendants violated Washington overtime law. In addition, when Defendant did pay overtime, Defendants failed to properly calculate the regulate rate of pay for overtime purposes by failing to include non-discretionary bonuses when calculating the regular rate.

44. As a result, Plaintiff and the Class have been deprived of wages and/or compensation, and Defendant is liable for actual damages, double

1 damages, and attorneys' fees and costs, in amounts to be determined at trial.

2

FIFTH CAUSE OF ACTION

3 **Failure To Pay All Wages At Termination**

4 **(Against All Defendants)**

5 45. Plaintiff re-alleges and incorporates all preceding paragraphs as if
6 fully set forth herein.

7 46. Revised Code of Washington §49.48.010 provides that “[w]hen any
8 employee shall cease to work for an employer, whether by discharge or by
9 voluntary withdrawal, the wages due to him on account of his employment shall be
10 paid to him at the end of the established pay period.”

11 47. By the actions alleged above, Defendant violated Revised Code of
12 Washington §49.48.010 by failing to provide all wages upon termination of
13 employment.

14 48. As a result of Defendant's unlawful acts, Plaintiffs and the Class have
15 been deprived of compensation in an amount to be determined at trial. Pursuant to
16 Revised Code of Washington §§49.46.090 and 49.48.030, Plaintiffs and the Class
17 are entitled to recover attorneys' fees and costs of the suit.

18

SIXTH CAUSE OF ACTION

19 **Violation of Washington's Consumer Protection Act**

20 **(Against All Defendants)**

21 49. Plaintiff re-alleges and incorporates all preceding paragraphs as if
fully set forth herein.

22 50. Defendant engaged in unfair or deceptive acts and practices when it:
23 (i) failed to pay Plaintiffs and the Class wages for all work done; (ii) failed to
24 provide Plaintiffs and the Class with compliant rest breaks; (iii) failed to properly
25 pay for all overtime worked; (iv) willfully refused to pay all wages; and (v) failed
26 to pay all wages due at termination.

27 51. Defendant's unfair or deceptive acts and practices repeatedly occurred
28 in Defendant's business, injured Plaintiff and the class and impacted the public

interest because they also injured other persons and had and have the capacity to injure others.

52. As a direct and proximate cause of Defendant's unfair or deceptive acts and practices, Plaintiff and the Class have suffered actual damages in that they were wrongfully denied payment of all wages owed, were prevented from receiving compliant rest breaks, were not properly paid all overtime to which they were entitled, were willfully denied wages, and were not paid all wages due at separation.

53. As a result of Defendants' unfair and deceptive practices, Plaintiffs and the Class are entitled, pursuant to Revised Code of Washington §19.86.090, to recover treble damages, reasonable attorneys' fees, and costs.

SEVENTH CAUSE OF ACTION
FEDERAL LABOR STANDARDS ACT
(Against All Defendants)

54. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

55. At all relevant times herein, Plaintiff and the FLSA Class has been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

56. The FLSA regulates, among other things, the payment of minimum wage by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 206(a); 29 U.S.C. § 207(a)(1).

57. Defendant is subject to the FLSA's minimum wage requirements because it is in interstate commerce and its employees are engaged in commerce.

58. Defendant pay plan applicable to all members of the FLSA class pays drivers on a per-mile basis, and does not pay for non-driving time. Defendant's compensation fails to pay minimum wage to its drivers under federal law, when

1 accounting for business expenses not reimbursed. In addition, pursuant to 29
 2 C.F.R §785.22(a), while on the road for over 24 hours, Plaintiff and FLSA Class
 3 members were on duty for 24 or, at a minimum, but were not compensated at the
 4 federal minimum wage for all hours worked. Defendant knew or should have
 5 known that its compensation policy and methodology failed to compensate the
 6 drivers at the federal minimum wage.

7 59. Defendant, pursuant to its policy and practice, violated the FLSA by
 8 refusing and failing to pay federal minimum wage to Plaintiff and other similarly
 9 situated employees.

10 60. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain
 11 categories of employees from federal minimum wage obligations. None of the
 12 FLSA exemptions apply to Plaintiff or other similarly situated drivers.

13 61. Plaintiff and all similarly situated employees are entitled to damages
 14 equal to the minimum wage minus *actual* wages received, within three years from
 15 the date each Plaintiff joins this case, plus periods of equitable tolling, because
 16 Defendant acted willfully and knew, or showed reckless disregard for, whether
 17 their conduct was unlawful.

18 62. Defendants have acted neither in good faith nor with reasonable
 19 grounds to believe that their actions and omissions were not a violation of the
 20 FLSA, and as a result, Plaintiff and other similarly situated employees are entitled
 21 to recover an award of liquidated damages under 29 U.S.C. § 216(b) in an amount
 22 equal to the amount of their unpaid minimum wages. Alternatively, should the
 23 Court find Defendants did not act willfully in failing to pay minimum wage,
 24 Plaintiff and all similarly situated employees are entitled to an award of
 25 prejudgment interest at the applicable legal rate.

26 63. As a result of the aforesaid willful violations of the FLSA's minimum
 27 wage provisions, minimum wage compensation has been lawfully withheld by
 28 Defendant from Plaintiff and all similarly situated employees. Accordingly,

1 Defendant is liable under 29 U.S.C. § 216(b), together with an additional amount
 2 as liquidated damages, prejudgment and post-judgment interest, reasonable
 3 attorneys' fees, and costs of this action.

4 **PRAYER**

5 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
 6 situated and also on behalf of the general public, pray for judgment against
 7 Defendant as follows:

- 8 A. An order that this action may proceed and be maintained as a class
 9 action;
- 10 B. A declaration Defendant is financially responsible for notifying all
 11 Class members of its wage and hour violations;
- 12 C. Appoint Plaintiff as class representative;
- 13 D. Appoint the undersigned as class counsel;
- 14 E. Declare the actions complained of violate Washington law;
- 15 F. Award Plaintiffs and the class compensatory damages, including lost
 16 wages;
- 17 G. Award Plaintiffs and the class damages and/or compensation for
 18 unpaid rest breaks;
- 19 H. Award Plaintiffs and the class all minimum wages owed;
- 20 I. Award double damages pursuant to Revised Code of Washington
 21 §49.50.050.
- 22 J. For all applicable statutory penalties under Washington law;
- 23 K. An order allowing other similarly situated drivers to receive notice
 24 and opportunity to opt-in to this case pursuant to 29 U.S.C. § 216(b)
 25 of the FLSA;
- 26 L. An award of damages in the amount of unpaid minimum wages at the
 27 federal minimum wage rate to the FLSA Class;
- 28 M. Liquidated damages for the FLSA Class;

1 N. An order enjoining Defendants from further unfair and unlawful
2 business practices and requiring them to comply with the FLSA;
3 O. Prejudgment interest at the maximum legal rate;
4 P. Reasonable attorneys' fees;
5 Q. Accounting of Defendant's records for the liability period;
6 R. General, special and consequential damages, to the extent allowed by
7 law;
8 S. Costs of suit; and
9 T. Such other relief as the Court may deem just and proper.

10 DATED: November 11, 2020

HAFFNER LAW PC

12 By: /s/ Joshua H. Haffner
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the Class and FLSA Collective Class members on all claims so triable.

DATED: November 11, 2020

HAFFNER LAW PC

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